



**NEVADA COMMISSION ON ETHICS
EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION
REGARDING JUST AND SUFFICIENT CAUSE**

REQUEST FOR OPINION NO. 06-31

SUBJECT: CANDICE TRUMMELL, MEMBER
NYE COUNTY COMMISSION

A. JURISDICTION:

In her capacity as a member of the Nye County Commission, Candice Trummell is a public officer as defined by NRS 281.4365. As such, the Ethics Commission has jurisdiction over this complaint.

B. REPORT OF INVESTIGATIVE ACTIVITIES:

- Reviewed Request for Opinion 06-31 received June 13, 2006 (TAB B)
- Reviewed responses received June 26, 2006, and July 6, 2006 (TAB C)
- Reviewed Item 26E on the *Agenda* and pages 30 and 31 of the *Minutes* from the August 3, 2004, Nye County Board of Commissioners Meeting (TAB D)
- Reviewed the *Agenda Information Form* for Item 26E and *Statement of Work* prepared by the Central Nevada Community Protection Working Group on behalf of Nye, Lincoln, Esmeralda County Commissions, and Caliente City Council (TAB E)
- Reviewed audio tape of discussion of Agenda Item 26E during the August 3, 2004 Nye County Board of Commissioners Meeting
- Reviewed the Professional Services Agreement (contract no. 04-029) between Nye County and the City of Caliente with a contract term of June 30, 2004 through November 17, 2004; Reviewed the Agreement Between the City of Caliente and Robison/Seidler, Inc., for Professional Services with a contract term of September 2, 2004, through June 30, 2005 (TAB F)
- Reviewed various invoices for services rendered pursuant to the September 2, 2004, Agreement Between the City of Caliente and RobisonSeidler, Inc. (TAB G)

- Reviewed undated letter to Lincoln County Commission from Ace Robison announcing Ms. Trummell's association with Robison/Seidler, Inc. (TAB H)
- Reviewed various invoices for services rendered by Robison/Seidler, Inc., in support of the Lincoln County Oversight Program (TAB I)
- Interviewed Ace Robison, President of Robison/Seidler, Inc., June 22, 2006
- Reviewed Request for Advisory Opinion originally submitted February 2006 along with relevant prior Commission on Ethics Opinions (TAB J)

C. RECOMMENDATIONS:

Based on investigative activities, it is recommended that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of:

- NRS 281.481 (1)
- NRS 281.481 (2)
- NRS 281.481 (4)
- NRS 281.481 (5)
- NRS 281.481 (7)
- NRS 281.481 (10)
- NRS 281.501 (2)
- NRS 281.505

SPECIFIC REASON:

There are no allegations or credible evidence of fact that amounts to or supports a violation by the public officer of the above provision of NRS Chapter 281.

D. SUMMARY OF REQUEST FOR OPINION:

The Request for Opinion, received June 13, 2006, alleges violations of NRS 281.481(1), 281.481(2), 281.481(4), 281.481(5), 281.481(7), 281.481(10), 281.501(2), and 281.505 by Candice Trummell, member, Nye County Commission. The complaint alleges Ms. Trummell violated the Ethics in Government Law as a result of the following:

- At the August 3, 2004, Nye County Commission Meeting, Ms. Trummell and the other four County Commission members unanimously voted to direct funding to study the impact of a nuclear waste transportation project in Lincoln County;
- The funding flowed through two contracts: One agreement entered into on August 3, 2004, between Nye County and the City of Caliente, and the other agreement entered into on September 2, 2004, between the City of Caliente and the consulting firm of Robison/Seidler, Inc. Robison/Seidler, Inc. provides nuclear oversight program consulting services to Lincoln County;

- The City of Caliente has never had staff with the expertise to perform the scope of work described in the agreement between Nye County and the City of Caliente; therefore, the agreement between Nye County and the City of Caliente was merely a means to pass the funds through to the consulting firm;
- Ms. Trummell is now employed by Robison/Seidler as a principal consultant.

E. SUMMARY OF SUBJECT'S RESPONSES:

Ms. Trummell initially responded to the allegations on June 26, 2006 and provided a more detailed response to several follow-up questions on July 10, 2006. Ms. Trummell has not waived the statutory time requirement.

In August 2004 Ms. Trummell had no plan or expectation that she would be offered a position at Robison/Seidler. The action taken by the members of the Nye County Commission at its August 2004 meeting provided money to the City of Caliente. She had no input or influence on the City's decision-making process that resulted in a contract between the City of Caliente and Robison/Seidler, Inc.

Regarding her recent employment with Robison/Seidler, Ms. Trummell has been in the professional political/policy consulting field since 1999. She has an academic background in political science and has studied the issues that Robison/Seidler manages.

Ms. Trummell became acquainted with the firm of Robison/Seidler in 2002. She was running for office when she met with Mr. Robison and Mr. Seidler to discuss Yucca Mountain. She previously met Mr. Robison during the time she was a political consultant from 1999-2001.

Late 2005 Mr. Seidler initiated discussions with Ms. Trummell regarding employment with Robison/Seidler. Discussions continued with Mr. Robison. By this point in time, it became clear that Nye County was not going to have any contractual relationship with Robison/Seidler in the foreseeable future; therefore, Ms. Trummell saw no conflict.

Ms. Trummell is office manager and senior policy analyst for Robison/Seidler. She will be involved in private sector business development but is not currently involved in business development with governmental entities. None of the potential private sector clients have any pecuniary interest in Nye County. She answers questions and serves documents related to current contracts the firm has with governmental entities, but no additional government contracts have been negotiated since she became associated with the firm. Ms. Trummell also manages an office building owned by Robison/Seidler. She performs work under the firm's current contract with Lincoln County and, until recently, she performed similar work for Esmeralda County as well. She monitors activities associated with the Yucca Mountain project and provides information and advice to the firm's clients.

The contract between Nye County and the City of Caliente ended approximately one year ago. Nye County was the pass-through agency for the funding received from the federal

government for the impact study. Nye County had no input as to how the City of Caliente would choose to spend the money or with whom the City would contract. The contract between the City of Caliente and Robison/Seidler, Inc. ended prior to Ms. Trummell's discussions regarding her potential employment with Robison/Seidler. There has been no time billed on this contract since she became associated with the firm. She does not perform any work or receive any compensation related to either of these contracts.

Robison/Seidler has no relationship with Nye County and has never contracted with Nye County. However, the firm does interact with Nye County staff and consultants. Ms. Trummell is sometimes a part of this interaction. Upon being hired by Robison/Seidler, she issued a verbal directive, and later a written directive, that Nye County consultants and staff are not to send her any information that they would not otherwise send to Robison/Seidler staff.

F. PERTINENT STATUTES AND REGULATIONS:

NRS 281.481 General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:

1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.

2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281.501.

(b) "Unwarranted" means without justification or adequate reason.

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4. A public officer or employee shall not accept any salary, retainer, augmentation, expense allowance or other compensation from any private source for the performance of his duties as a public officer or employee.

5. If a public officer or employee acquires, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, he shall not use the information to further the pecuniary interests of himself or any other person or business entity.

* * * * *

7. A public officer or employee, other than a member of the Legislature, shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of his public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) The use of telephones or other means of communication if there is not a special charge for that use.

If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

* * * * *

10. A public officer or employee shall not seek other employment or contracts through the use of his official position.

NRS 281.501 Additional standards: Voting by public officers; disclosures required of public officers and employees; effect of abstention from voting on quorum; Legislators authorized to file written disclosure.

* * * * *

2. Except as otherwise provided in subsection 3, in addition to the requirements of the code of ethical standards, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

(a) His acceptance of a gift or loan;

(b) His pecuniary interest; or

(c) His commitment in a private capacity to the interests of others.

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

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NRS 281.505 Contracts in which public officer or employee has interest prohibited; exceptions.

1. Except as otherwise provided in this section and NRS 281.555 and 332.800, a public officer or employee shall not bid on or enter into a contract between a

governmental agency and any private business in which he has a significant pecuniary interest.

2. A member of any board, commission or similar body who is engaged in the profession, occupation or business regulated by such board or commission, may, in the ordinary course of his business, bid on or enter into a contract with any governmental agency, except the board, commission or body of which he is a member, if he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.

3. A full- or part-time faculty member or employee of the Nevada System of Higher Education may bid on or enter into a contract with a governmental agency, or may benefit financially or otherwise from a contract between a governmental agency and a private entity, if the contract complies with the policies established by the Board of Regents of the University of Nevada pursuant to NRS 396.255.

4. A public officer or employee, other than an officer or employee described in subsection 2 or 3, may bid on or enter into a contract with a governmental agency if the contracting process is controlled by rules of open competitive bidding, the sources of supply are limited, he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers. If a public officer who is authorized to bid on or enter into a contract with a governmental agency pursuant to this subsection is a member of the governing body of the agency, the public officer, pursuant to the requirements of NRS 281.501, shall disclose his interest in the contract and shall not vote on or advocate the approval of the contract.

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G. RESULTS OF INVESTIGATION:

Factual History:

With an academic background in political science, Ms. Trummell had been in the professional political/policy consulting field prior to becoming a member of the Nye County Commission.

In 2002 Ms. Trummell was elected to a four-year term as a member of the Nye County Commission.

On August 3, 2004, the Nye County Commission discussed various options for accomplishing tasks related to conducting a study of the environmental impact of the Caliente nuclear waste rail transportation corridor on Nye, Lincoln and Esmeralda Counties. The work consisted of socioeconomic investigations regarding various impacts on the three counties along the corridor of the proposed rail alignment, construction and operation. Nye County had been meeting with representatives of Lincoln and Esmeralda Counties as well as the City of Caliente to consider ways to cooperatively share information about those impacts and related issues. The U.S. Department of Energy made funding available for this project. The jurisdictions agreed that Nye County would request funding under its existing transportation cooperative agreement with the U.S.

Department of Energy to conduct these studies and investigations. The funding was disbursed to Nye County and then passed along to the other jurisdictions. The Nye County Commission voted unanimously to enter into an agreement with the City of Caliente to complete specific tasks relating to the impact study.

On September 2, 2004, the City of Caliente entered into an agreement with Robison/Seidler, Inc. whereby Robison/Seidler, Inc. performed the services required to conduct specific tasks relating to the study referenced above. Invoices dated from October 2004 through March 2005 evidence services rendered under this agreement. The invoice details specify which Robison/Seidler personnel performed work under this agreement. None of the invoices indicate any work performed by Ms. Trummell.

In early 2006 Robison/Seidler, Inc. announced that Ms. Trummell had accepted a position at Robison/Seidler. Ms. Trummell has performed work for Robison/Seidler since January 2006.

In February 2006 Ms. Trummell submitted a request for an Advisory Opinion on this matter but subsequently withdrew the request in March before receiving an Opinion from the Commission on Ethics.

Allegations regarding NRS 281.481(1):

NRS 281.481(1) states:

“A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.”

There is no credible evidence that suggests Ms. Trummell’s decision to direct funds for the impact study in August 2004 is related to her subsequent employment with Robison/Seidler, Inc., in January 2006. The Nye County Commission members voted unanimously to direct funding through the City of Caliente. No condition regarding who would perform the work was placed within the agreement between Nye County and the City of Caliente.

Allegations regarding NRS 281.481(2):

NRS 281.481(2) states:

“A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) “Commitment in a private capacity to the interests of that person” has the meaning ascribed to “commitment in a private capacity to the interests of others” in subsection 8 of NRS 281.501.

(b) “Unwarranted” means without justification or adequate reason.”

There is no evidentiary basis to support the allegation that Ms. Trummell acted in violation of NRS 281.481(2). This section prohibits Ms. Trummell from using her position as a commissioner to secure or grant herself or Robison/Seidler any privilege, preference, exemption or advantage related to their business for which there is no justification or adequate reason. Ms. Trummell’s decision in August 2004 occurred before her employment relationship began in January 2006. There is no evidence in the form of proof provided by witnesses, records, or documents that supports a reasonable belief that Ms. Trummell’s decision was motivated by her future employment with Robison/Seidler.

However, in her future dealings, Ms. Trummell should exercise caution in that she is prohibited from using her position as a commissioner to secure or grant herself or Robison/Seidler any privilege, preference, exemption or advantage related to their business for which there is no justification or adequate reason. Ms. Trummell would be prohibited from acting as an agent for Nye County in negotiating or executing a contract between Nye County and Robison/Seidler if determined that she has a significant pecuniary interest in the firm.

Allegations regarding NRS 281.481(4):

NRS 281.481(4) states:

“A public officer or employee shall not accept any salary, retainer, augmentation, expense allowance or other compensation from any private source for the performance of his duties as a public officer or employee.”

There is no evidentiary basis to support the allegation that Ms. Trummell acted in violation of NRS 281.481(4).

Allegations regarding NRS 281.481(5):

NRS 281.481(5) states:

“If a public officer or employee acquires, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, he shall not use the information to further the pecuniary interests of himself or any other person or business entity.”

There is no evidentiary basis to support the allegation that Ms. Trummell acted in violation of NRS 281.481(5).

However, in her future dealings, Ms. Trummell should exercise caution due to the fact that her official position may give her access to information not generally available to the

public and could provide an opportunity for such information to be used for the benefit of her employer. Therefore, Ms. Trummell must be mindful of her duty to hold her public office for the sole benefit of the people.

Allegations regarding NRS 281.481(7):

“A public officer or employee, other than a member of the Legislature, shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of his public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) The use of telephones or other means of communication if there is not a special charge for that use.

If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.”

There is no evidentiary basis to support the allegation that Ms. Trummell acted in violation of NRS 281.481(7).

Allegations regarding NRS 281.481(10):

NRS 281.481(10) states:

“A public officer or employee shall not seek other employment or contracts through the use of his official position.”

There is no evidentiary basis to support the allegation that Ms. Trummell acted in violation of NRS 281.481(10).

However, in her future dealings, Ms. Trummell should exercise caution not to use her official position to solicit contracts from governmental entities with which she may have a relationship through her official position.

Allegations regarding NRS 281.501(2):

NRS 281.501(2) states:

“Except as otherwise provided in subsection 3, in addition to the requirements of the code of ethical standards, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

- (a) His acceptance of a gift or loan;
- (b) His pecuniary interest; or
- (c) His commitment in a private capacity to the interests of others.

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.”

There is no evidentiary basis to support the allegation that Ms. Trummell acted in violation of NRS 281.501(2). There is no evidence that Ms. Trummell’s August 2004 decision was influenced by her current employment status with Robison/Seidler.

However, in her future dealings, the Ms. Trummell should exercise caution by consulting with Nye County Commission’s attorney before participating and voting on issues that are before the County Commission in matters involving Robison /Seidler, Inc. (Opinion No. 03-34, Boggs-McDonald). Additionally, Ms. Trummell should consider the specific steps of disclosure and possible abstention whenever Ms. Trummell’s actions might be affected by her private commitment (Opinion No. 99-56, Woodbury).

Allegations regarding NRS 281.505:

NRS 281.505 states:

“1. Except as otherwise provided in this section and NRS 281.555 and 332.800, a public officer or employee shall not bid on or enter into a contract between a governmental agency and any private business in which he has a significant pecuniary interest.

2. A member of any board, commission or similar body who is engaged in the profession, occupation or business regulated by such board or commission, may, in the ordinary course of his business, bid on or enter into a contract with any governmental agency, except the board, commission or body of which he is a member, if he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.

3. A full- or part-time faculty member or employee of the Nevada System of Higher Education may bid on or enter into a contract with a governmental agency, or may benefit financially or otherwise from a contract between a governmental agency and a private entity, if the contract complies with the policies established by the Board of Regents of the University of Nevada pursuant to NRS 396.255.

4. A public officer or employee, other than an officer or employee described in subsection 2 or 3, may bid on or enter into a contract with a governmental agency if the contracting process is controlled by rules of open competitive bidding, the sources of supply are limited, he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers. If a public officer who is authorized to bid on or enter into a contract with a governmental agency pursuant to this subsection is a member of the governing body of the agency, the public officer, pursuant to the requirements of NRS 281.501, shall disclose his interest in the contract and shall not vote on or advocate the approval of the contract.”

There is no evidentiary basis to support the allegation that Ms. Trummell acted in violation of NRS 281.505.

H. CONCLUSION:

A review of the record (as contained in the meeting agenda minutes) as well as the records related to both professional services agreements does not support nor lend any credibility to the allegations set forth in the complaint. There is no evidentiary basis in support of the Commission further investigating the allegations.

It is hereby recommended the Panel find no just and sufficient cause exists for the Commission to hold a hearing and render an opinion on the allegations that the subject violated NRS 281.481(1), 281.481(2), 281.481(4), 281.481(5), 281.481(7), 281.481(10), 281.501(2) 281.505 and further that the allegations regarding NRS 281.481(1), 281.481(2), 281.481(4), 281.481(5), 281.481(7), 281.481(10), 281.501(2) 281.505 be dismissed.

DATED: July 14, 2006

Matthew C. DiOrio
MATTHEW C. DIORIO
SENIOR INVESTIGATOR